



Phone: (212) 885-5148
Fax: (917) 591-7897
Email: dskakel@blankrome.com

May 6, 2016

VIA ECF

The Honorable Alison J. Nathan
United States District Judge
United States District Court
Southern District of New York
40 Foley Square, Room 2102
New York, New York 10007

**Re: CF 135 Flat LLC, CF 135 West Member LLC, and The Chetrit Group, LLC
v. Triadou SPV S.A. and City of Almaty, Case No. 15-CV-5345 (AJN)**

Dear Judge Nathan:

We represent Crossclaim Defendant Triadou SPV S.A. ("Triadou") and submit this letter pursuant to Your Honor's May 6, 2016 Order (ECF Doc. 133).

As set forth in our May 5, 2016, 12:03 pm email to Your Honor and counsel, with respect to the Affidavits of Matthew Meltsner and Jehoshua Graff, sworn to May 3, 2016 (the "May 3 Affidavits"), and provided to Your Honor and counsel for Triadou in a May 4, 2016, 4:08 pm email from counsel for Crossclaim Plaintiffs City of Almaty and BTA Bank JSC ("Almaty/BTA"), we ask that the Court strike both for the following reasons:

1. The May 3 Affidavits fail to comply with this Court's April 27, 2016 Order (ECF Doc. 122) (the "Deadlines Order"), pursuant to which "Almaty/BTA Bank shall provide their witness affidavits to Triadou and the Court by May 2, 2016," and are therefore untimely.

2. Counsel for Almaty/BTA failed to inform Your Honor that these same May 3 Affidavits were e-filed with the State Court by the Chetrits' counsel in connection with Triadou's receiver motion on May 3, 2016, at 11:47 pm, followed by the e-filing of the Chetrits' counsel's letter concerning these Affidavits two minutes later at 11:49 pm. (A copy of the Chetrits' May 3 State Court filings is attached as Exhibits 1 and 2.) As Your Honor is aware, Triadou's receiver motion was returnable on May 4, 2016 at 9:30 am before State Court Judge David B. Cohen; the Chetrits' opposition papers were due on April 25, 2016. In his May 3 letter to Judge Cohen, the

The Chrysler Building 405 Lexington Avenue New York, NY 10174-0208

www.BlankRome.com



The Honorable Alison J. Nathan
 May 6, 2016
 Page 2

Chetrits' counsel represents that "in advance of the May 19, 2016 evidentiary hearing on its motion for a preliminary injunction, Almaty caused affidavits to be executed by (1) Matthew Meltsner . . . (2) Jehoshua Graff. . . and (3) Lee Eichen" (Ex. 2 at 3-4.) The Chetrits' attorney's letter goes on to argue that the May 3 Affidavits and the Eichen Affidavit "provide overwhelming evidence" that "clearly establishes" the substantial harm that the imposition of a receiver would have on the Flatotel project. (*Id.* at 4.) Almaty/BTA's unquestionable facilitation of the e-filing of the May 3 Affidavits in the State Court before those Affidavits were provided to this Court and Triadou underscores the impropriety of Almaty/BTA's untimely submission of the May 3 Affidavits.

3. Nor does Almaty/BTA's reliance on an interim "subpoena" excuse the untimeliness of the May 3 Affidavits. This is particularly so (1) in light of the Chetrits' use of these Affidavits (one from their own employee and one from their own lawyer) in the State Court on the receiver motion, and (2) given the Chetrits' position set forth in the April 25, 2016 "joint letter" to this Court (ECF Doc. 119) in which Almaty/BTA included in the list of witnesses they expected to call at an evidentiary hearing Messrs. Meltsner and Graff—and the Chetrits had no objection. Likewise, at the April 27, 2016 conference before Your Honor, counsel for the Chetrits had no objection to the witnesses Almaty/BTA intended to call (including Messrs. Meltsner and Graff), stating that the Chetrits' "position is the same as" that of Almaty/BTA's counsel (4/27/2016 Hrg. Tr., at 32).

If, despite all of this dilatory maneuvering by Almaty/BTA and the Chetrits, Your Honor does not strike the May 3 Affidavits, pursuant to Your Honor's Deadlines Order, and as indicated in our May 5, 2016, 12:03 pm email to Your Honor, Triadou advises the Court and Almaty/BTA that it intends to cross both Messrs. Meltsner and Graff.

Triadou also advises the Court and Almaty/BTA (as indicated in our May 5, 2016, 12:03 pm email) that it intends to cross Nicholas Bourg, Lee Eichen, and Abigail Tudor, the witnesses whose affidavits Almaty/BTA timely provided on May 2, 2016.

Pursuant to the Court's April 27, 2016 Order (ECF Doc. 122), and as set forth in our May 5, 2016, 6:15 pm email to Your Honor, Triadou further advises Your Honor and Almaty/BTA that it intends to call the following witnesses at the evidentiary hearing on May 19, 2016: (i) Agnes Cossu, a paralegal at Chabrier Avocats SA in Geneva, and (ii) Cesare Cerrito, a Director of Triadou. As we noted in our May 5 email, yesterday was a Swiss public holiday (Ascension Day), and we were therefore unable to confirm the in-person availability of each of these individuals yesterday. We will do so as soon as possible, however, and, to the extent that either of them is unavailable to appear in person on May 19, we will promptly advise the Court and



The Honorable Alison J. Nathan
May 6, 2016
Page 3

counsel for Almaty/BTA and will not submit an affidavit constituting the direct testimony for that individual on May 11, 2016.

Respectfully submitted,

s/Deborah A. Skakel
Deborah A. Skakel

cc: All Counsel of Record (*via* ECF))